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EXAMINER
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ZERVIGON, RUDY

ART UNIT	PAPER NUMBER
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1792

MAIL DATE	DELIVERY MODE
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06/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/775,664	SHUFFLEBOTHAM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Rudy Zervigon	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 72,74-79,81-84 and 94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 72,74-79,81-84 and 94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/29/2008</u> .   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 72-79, 81-84 and 94 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. US 6042687 A in view of Latz; Rudolf et al. (US 5,169,509 A). Although the conflicting claims are not identical, they are not patentably distinct from each other because. Claims 1-16 of U.S. Patent No. US 6042687 A do not claim an orifice orientated relative to the axis thereof to direct the process gas in an upward direction away from an exposed surface of the substrate.

Latz teaches a wafer plasma processing apparatus (sole figure) including injector tubes (nozzle portion of 24/24a; Sole Figure) are provided on a first gas ring (24/24(a); Sole Figure) and at least one of the injector tubes (nozzle portion of 24/24a; Sole Figure) including an orifice orientated relative to the axis thereof to direct the process gas in an upward direction away from

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an exposed surface of the substrate (1,1',1'') when the substrate is supported on the substrate support (27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace one of U.S. Patent No. US 6042687 A's injector tubes with Latz's injector tubes (nozzle portion of 24/24a; Sole Figure) provided on a first gas ring (24/24(a); Sole Figure).

Motivation to replace one of U.S. Patent No. US 6042687 A's injector tubes with Latz's injector tubes (nozzle portion of 24/24a; Sole Figure) provided on a first gas ring (24/24(a); Sole Figure) is for promoting "uniform and stable process" as taught by Latz (column 1; lines 60-65).

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 72, 78, 79, and 81-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li; Shijian et al. (US 6070551 A). Li teaches:

- i. An inductively coupled plasma CVD processing system (Figure 3; column 4; line 30-65) comprising: a plasma processing chamber (18; Figure 3; column 4; line 42); a planar dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46) forming a top wall (75; Figure 3; column 5; lines 1-11) of the processing chamber (18; Figure 3; column 4; line 42); a substantially planar electrically-conductive coil (9; Figure 3; column 4; line 30-65) extending across the planar dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46) which inductively couples RF energy into the plasma processing chamber (18; Figure 3; column 4; line 42) through the planar dielectric

window (portion 75 of dielectric 6; Figure 3; column 4; line 46) and energizes the process gas into a plasma state; a substrate support (14; Figure 3; column 4; line 30-65) mounted in the chamber (18; Figure 3; column 4; line 42) below the dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46) and having a support surface (16; Figure 3; column 4; line 30-65) facing the dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46), the support surface (16; Figure 3; column 4; line 30-65) adapted to support a substrate (20; Figure 3; column 4; line 30-65) within the processing chamber (18; Figure 3; column 4; line 42), the support surface (16; Figure 3; column 4; line 30-65) lying in a plane parallel to the planar dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46); and a plurality of injector tubes (34,34a; Figure 3; column 4; line 47-58) adapted to introduce process gas into the processing chamber (18; Figure 3; column 4; line 42), all of the injector tubes (34,34a; Figure 3; column 4; line 47-58) being spaced outwardly from the periphery of the substrate (20; Figure 3; column 4; line 30-65) when the substrate (20; Figure 3; column 4; line 30-65) is supported on the substrate support (14; Figure 3; column 4; line 30-65) - claim 72. Applicant's amended claim limitation "all of the injector tubes being spaced outwardly from the periphery of the substrate when the substrate is supported on the substrate support" is a claim requirement of intended use in the pending apparatus claims. It is noted that an infinite number of substrate geometries and/or placements (non-structural requirements) within the reactor can and would meet the claim requirement. As a result, the prior art structure is capable of performing the intended use. Further, it has been held that claim language that simply specifies an intended use or field of use for the invention generally will not limit the

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scope of a claim (Walter , 618 F.2d at 769, 205 USPQ at 409; MPEP 2106). Additionally, in apparatus claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto , 136 USPQ 458, 459 (CCPA 1963); MPEP 2111.02).

- ii. The system (Figure 3; column 4; line 30-65) of claim 72, wherein the plurality of gas flows from the injector tubes (34,34a; Figure 3; column 4; line 47-58) overlap each other in a plane parallel to an exposed surface of the substrate (20; Figure 3; column 4; line 30-65) when the substrate (20; Figure 3; column 4; line 30-65) is supported on the substrate support (14; Figure 3; column 4; line 30-65), as claimed by claim 78. When the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent (In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977); MPEP 2112.01).
- iii. The system (Figure 3; column 4; line 30-65) of claim 72, wherein each of the injector tubes (34,34a; Figure 3; column 4; line 47-58) includes an exit orifice (38; Figure 3; column 4; line 47-58) , and each of the orifices (38; Figure 3; column 4; line 47-58) is spaced the same distance outwardly from the periphery of the substrate (20; Figure 3; column 4; line 30-65) when the substrate (20; Figure 3; column 4; line 30-65) is supported on the substrate support (14; Figure 3; column 4; line 30-65), as claimed by claim 79. Applicant's claim requirements of "and each of the orifices is spaced the same distance outwardly from the periphery of the substrate when the substrate is supported on the

substrate support” is a claim requirement of intended use in the pending apparatus claims. It is noted that an infinite number of substrate geometries and/or placements (non-structural requirements) within the reactor can and would meet the claim requirement. As a result, the prior art structure is capable of performing the intended use. Further, it has been held that claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim (Walter , 618 F.2d at 769, 205 USPQ at 409; MPEP 2106). Additionally, in apparatus claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto , 136 USPQ 458, 459 (CCPA 1963); MPEP 2111.02).

- iv. The system (Figure 3; column 4; line 30-65) is claim 72, wherein all of the injector tubes (34,34a; Figure 3; column 4; line 47-58) have the same length such that exit orifices (38; Figure 3; column 4; line 47-58) of the injector tubes (34,34a; Figure 3; column 4; line 47-58) are spaced the same distance outwardly from the periphery of the substrate (20; Figure 3; column 4; line 30-65) when the substrate (20; Figure 3; column 4; line 30-65) is supported on the substrate support (14; Figure 3; column 4; line 30-65), as claimed by claim 81. Applicant’s claim requirements of “such that exit orifices of the injector tubes are spaced the same distance outwardly from the periphery of the substrate when the substrate is supported on the substrate support” is a claim requirement of intended use in the pending apparatus claims. It is noted that an infinite number of substrate geometries and/or placements (non-structural requirements) within the reactor can and would meet

the claim requirement. As a result, the prior art structure is capable of performing the intended use. Further, it has been held that claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim (Walter , 618 F.2d at 769, 205 USPQ at 409; MPEP 2106). Additionally, in apparatus claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto , 136 USPQ 458, 459 (CCPA 1963); MPEP2111.02).

- v. The system (Figure 3; column 4; line 30-65) of claim 72, wherein some of the injector tubes (34,34a; Figure 3; column 4; line 47-58) have different lengths such that exit orifices (38; Figure 3; column 4; line 47-58) of some of the injector tubes (34,34a; Figure 3; column 4; line 47-58) are spaced a different distance outwardly from the periphery of the substrate (20; Figure 3; column 4; line 30-65) when the substrate (20; Figure 3; column 4; line 30-65) is supported on the substrate support (14; Figure 3; column 4; line 30-65), as claimed by claim 82
- vi. The system (Figure 3; column 4; line 30-65) of claim 72, wherein all of the injector tubes (34,34a; Figure 3; column 4; line 47-58) includes an exit orifice (38; Figure 3; column 4; line 47-58) spaced outwardly from the periphery of the substrate support (14; Figure 3; column 4; line 30-65), as claimed by claim 83



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Li does not teach the injector tubes (34,34a; Figure 3; column 4; line 47-58) having exit orifices with exit orifice diameters of 0.010 to 0.060 inches, as claimed by claim 72.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the dimension of Li's injector tubes (34,34a; Figure 3; column 4; line 47-58) exit orifice diameters.

Motivation to optimize the dimension of Li's injector tubes exit orifice diameters is for providing the desired rate of gas introduction as taught by Li (column 3, line 66 – column 4, line 7).

5. Claims 74-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li; Shijian et al. (US 6070551 A) in view of Latz; Rudolf et al. (US 5,169,509 A). Li is discussed above. Li is discussed above.

Li further teaches:

- i. The system (Figure 3; column 4; line 30-65) of claim 76, including a second gas ring (36; Figure 3; column 4; line 47-58) disposed above or below the first gas ring (36a; Figure 3; column 4; line 47-58) in the plasma processing chamber (18; Figure 3; column 4; line 42), as claimed by claim 77

Li does not teach:

- i. The system (Figure 3; column 4; line 30-65) of claim 72, wherein: the injector tubes (34,34a; Figure 3; column 4; line 47-58) are provided on a first gas ring (36a; Figure 3; column 4; line 47-58); all of the injector tubes (34,34a; Figure 3; column 4; line 47-58) are orientated in the plasma processing chamber (18; Figure 3; column 4; line 42) to direct the process gas along axes thereof that intersect an exposed surface of the substrate (20; Figure 3; column 4; line 30-65) at an acute angle when the substrate (20; Figure 3;

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column 4; line 30-65) is supported on the substrate support (14; Figure 3; column 4; line 30-65) - claim 74

- ii. An inductively coupled plasma CVD processing system (Figure 3; column 4; line 30-65) comprising: a plasma processing chamber (18; Figure 3; column 4; line 42); a planar dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46) forming a top wall (75; Figure 3; column 5; lines 1-11) of the processing chamber (18; Figure 3; column 4; line 42); a substantially planar electrically-conductive coil (9; Figure 3; column 4; line 30-65) extending across the planar dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46) which inductively couples RF energy into the plasma processing chamber (18; Figure 3; column 4; line 42) through the planar dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46) and energizes the process gas into a plasma state; a substrate support (14; Figure 3; column 4; line 30-65) mounted in the chamber (18; Figure 3; column 4; line 42) below the dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46) and having a support facing the dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46), the support surface (16; Figure 3; column 4; line 30-65) adapted to support a substrate (20; Figure 3; column 4; line 30-65) within the processing chamber (18; Figure 3; column 4; line 42), the support surface (16; Figure 3; column 4; line 30-65) lying in a plane parallel to the planar dielectric window (portion 75 of dielectric 6; Figure 3; column 4; line 46); and a plurality of injector tubes (34,34a; Figure 3; column 4; line 47-58) adapted to introduce process gas into the processing chamber (18; Figure 3; column 4; line 42), all of the injector tubes (34,34a; Figure 3; column 4; line 47-58) being spaced outwardly from the periphery of

the substrate (20; Figure 3; column 4; line 30-65) when the substrate (20; Figure 3; column 4; line 30-65) is supported on the substrate support (14; Figure 3; column 4; line 30-65) and at least one of the injector tubes (34,34a; Figure 3; column 4; line 47-58) including an orifice (38; Figure 3; column 4; line 47-58) orientated relative to the axis thereof to direct the process gas in an upward direction away from an exposed surface of the substrate when the substrate is supported on the substrate support, as claimed by claim 75. Applicant's amended claim limitation "all of the injector tubes being spaced outwardly from the periphery of the substrate when the substrate is supported on the substrate support" is a claim requirement of intended use in the pending apparatus claims. It is noted that an infinite number of substrate geometries and/or placements (non-structural requirements) within the reactor can and would meet the claim requirement. As a result, the prior art structure is capable of performing the intended use. Further, it has been held that claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim (Walter , 618 F.2d at 769, 205 USPQ at 409; MPEP 2106). Additionally, in apparatus claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto , 136 USPQ 458, 459 (CCPA 1963); MPEP 2111.02).

- iii. The system (Figure 3; column 4; line 30-65) of claim 72, wherein the injector tubes (34,34a; Figure 3; column 4; line 47-58) are detachably connected ("fluidly coupled"; column 4; lines 47-58) to a first gas ring (36a; Figure 3; column 4; line 47-58) made of

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aluminum which includes outlets (38; Figure 3; column 4; line 47-58) adapted to supply process gas into the plasma processing chamber (18; Figure 3; column 4; line 42), as claimed by claim 76

Latz teaches a wafer plasma processing apparatus (sole figure) including injector tubes (nozzle portion of 24/24a; Sole Figure) are provided on a first gas ring (24/24(a); Sole Figure) and at least one of the injector tubes (nozzle portion of 24/24a; Sole Figure) including an orifice orientated relative to the axis thereof to direct the process gas in an upward direction away from an exposed surface of the substrate (1,1',1'') when the substrate is supported on the substrate support (27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace one of Li's injector tubes (34,34a; Figure 3; column 4; line 47-58) with Latz's injector tubes (nozzle portion of 24/24a; Sole Figure) provided on a first gas ring (24/24(a); Sole Figure). Motivation to replace one of Li's injector tubes (34,34a; Figure 3; column 4; line 47-58) with Latz's injector tubes (nozzle portion of 24/24a; Sole Figure) provided on a first gas ring (24/24(a); Sole Figure) is for promoting "uniform and stable process" as taught by Latz (column 1; lines 60-65).

6. Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li; Michael D. et al. (US 6070551 A) in view of Chen, Aihua (USPat. 5,691,876). Li is discussed above. Li does not teach the substrate support includes means for maintaining the substrate at a desired temperature – claim 84.

Chen teaches:

- i. the substrate (not shown; Figure 1; column 8, lines 40-55) support (100; Figure 1) including means for maintaining the substrate (not shown; Figure 1; column 8, lines 40-55) at a desired temperature – claim 84

Applicant's means for maintaining the substrate at a desired temperature is supported by the specification:

“ [0027] In order to prevent damage to metal lines or the pre-existing films and structures on the substrate and to ensure accurate and precise process control, a heated mechanical or preferably an electrostatic chuck (ESC) is employed to hold the substrate. The ESC is preferably bipolar or monopolar. Preferably, the electrode is maintained at a temperature ranging from about 50°C. to 350°C, in order to maintain the temperature of the wafer to about 325°C to 375°C.

“

Consequently, Chen teaches equivalent means (column 6, lines 35-54; 5-18)

- i. The system (Figure 1) of claim 72, wherein the substrate (not shown; Figure 1; column 8, lines 40-55) support (100; Figure 1) includes means (see above) for maintaining the substrate (not shown; Figure 1; column 8, lines 40-55) at a desired temperature when the substrate (not shown; Figure 1; column 8, lines 40-55) is supported on the substrate (not shown; Figure 1; column 8, lines 40-55) support (100; Figure 1), as claimed by claim 84

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace Li's support (14; Figure 3; column 4; line 30-65) with Chen's temperature controlled support (100; Figure 1).

Motivation to replace Li's support (14; Figure 3; column 4; line 30-65) with Chen's temperature controlled support (100; Figure 1) is for conducting high temperature processing of substrates as taught by Chen (column 1; lines 1-18; column 2; lines 18-24).

7. Claim 94 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li; Shijian et al. (US 6070551 A) in view of Ishii; Nobuo et al. (US 5571366 A). Li is discussed above. Li does not teach the system of Claim 72, wherein the planar electrically-conductive coil is a single conductive element formed into a planar spiral or a series of concentric rings. Ishii teaches an inductively coupled plasma reactor including a planar electrically-conductive coil (6; Figure 8) is a single conductive element formed into a planar spiral.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add Ishii's planar electrically-conductive coil (6; Figure 8) to Li's apparatus.

Motivation to add Ishii's planar electrically-conductive coil (6; Figure 8) to Li's apparatus is for higher precision plasma processing as taught by Ishii (column 10; lines 50-52).

8. Claims 72-79, 81-84, and 94 are rejected under 35 U.S.C. 103(a) as being obvious over Demos; Alex et al. (US 6626185 B2).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference

under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Demos does not teach the injector tubes (180; Figure 2) having exit orifices (187) with exit orifice diameters of 0.010 to 0.060 inches, as claimed by claim 72.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the dimension of Demos's injector tubes (180) exit orifice (187) diameters.

Motivation to optimize the dimension of Demos's injector tubes (180) exit orifice (187) diameters is for providing the desired rate of gas introduction as taught by Demos (column 3, line 66 – column 4, line 12).

9. Claims 72-79, 81-84, and 94 are rejected under 35 U.S.C. 103(a) as being obvious over McMillin; Brian et al. (US 6270862 B1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference

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under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

McMillin does not teach the injector tubes (180; Figure 2a) having exit orifices (187) with exit orifice diameters of 0.010 to 0.060 inches, as claimed by claim 72.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the dimension of McMillin's injector tubes (180) exit orifice (187) diameters.

Motivation to optimize the dimension of McMillin's injector tubes (180) exit orifice (187) diameters is for providing the desired rate of gas introduction as taught by McMillin (column 1; lines 41-63).

10. Claims 72-79, 81-84 and 94 are rejected under 35 U.S.C. 103(a) as being obvious over McMillin; Brian et al. (US 6013155 A).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference



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under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2). .

McMillin does not teach the injector tubes (180; Figure 2a) having exit orifices (187) with exit orifice diameters of 0.010 to 0.060 inches, as claimed by claim 72.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the dimension of McMillin's injector tubes (180) exit orifice (187) diameters.

Motivation to optimize the dimension of McMillin's injector tubes (180) exit orifice (187) diameters is for providing the desired rate of gas introduction as taught by McMillin (column 4; lines 9-21).

### ***Response to Arguments***

11. Applicant's arguments filed February 20, 2008 have been fully considered but they are not persuasive.

12. With respect to the Examiner's 102(e) rejection under Li and both McMillins, now *prima face* 103(a) rejections under each alone, Applicant argues the Examiner's decision to accord Li's and the McMillins 35 USC 120 date of May 13, 1996, and June 28, 1996, each which predates Applicant's own 35 USC 120 date of December 23, 1996. In response, the Examiner has attempted to retrieve the electronic file histories of 08647619, and 08672315 without success. However, the Examiner has requested the file histories from the abandoned file repository on

May 24, 2008. See attachment. The Examiner anticipates such processing will take time to process, however Applicant is welcomed to request an interview to ascertain the Examiner's opinion on the the matter once the file is delivered.

13. With respect to Damos not showing Applicant's claimed "orifice which directs process gas in an upward direction away from the exposed surface of the substrate", the Examiner notes that Damos's drawings are not disclosed as drawn to scale, as a result proportions or dimensions shown are not actual. Further, the "direction" of gas can change based on Damos's flow rates of the other orifices.

### ***Conclusion***

14. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Rudy Zervigon whose telephone number is (571) 272-

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1442. The examiner can normally be reached on a Monday through Thursday schedule from 8am through 7pm. The official fax phone number for the 1763 art unit is (571) 273-8300. Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Chemical and Materials Engineering art unit receptionist at (571) 272-1700. If the examiner can not be reached please contact the examiner's supervisor, Parviz Hassanzadeh, at (571) 272-1435.

/Rudy Zervigon/

Primary Examiner, Art Unit 1792